IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.284 OF 1991

1. M/s.S.S.Wilson & Co.,
15-A, Raviwar Peth,
Akkalkot Road,
Solapur

2. Sudarshan Narsayya
Shriram, Age Major
Occ: Business, R/o
1504, New Pacha Peth
Solapur

3. Kisan Dubayya Shriram
Age Major, Occ:Business
r/o as above.

4. Smt.Shakuntala
Murlidhar Shriram,
Age Major, Occ:
Business, r/o 1503,
New Pacha Peth,
Solapur.

5. Shriprakash Vyankayya
Madur, Age Major
Occ: Business
R/o 269, Sakhar Peth
Solapur. ..Appellants
[1 to 5 Ori.
Accused Nos.
1, 3 to 6

Versus

1. Govind Narsinha
Raichur, Age 48 yrs.
Occ: Service
Resident of I.T.O.
'B' Ward,
Sahyadri Shopping
Centre, Solapur, ..Respondent No.1
(Ori.Complainant)

2. The State of
Maharahstra ..Respondent No.2

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Mr.R.M.Agarwal for Appellants
Mr.H.V.Mehta Addl.P.P. for Respondent No.1
Ms.S.V.Gajare A.P.P. for State-Respondent No.2

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : NOVEMBER 16, 2005

ORAL JUDGMENT:

1. Through this appeal, the appellants i.e. original accused nos.1 and 3 to 6 have challenged the judgment and order dated 15.1.1991 passed by the learned Judicial Magistrate F.C. Court No.2 Solapur in RCC No. 48 of 1986. By the said judgment and order, all the appellants were convicted for the offence under Section 276CC of the Income Tax Act, 1961. They were sentenced to suffer S.I. till rising of the Court and to pay a fine of Rs.200/- each i/d S.I. for fifteen days. It may be stated here that originally six accused were facing the trial. However, original accused no.2 Vithal Rajaram Shriram expired during the pendency of the trial. Hence, the case against him abated and the trial proceeded only in respect of original accused nos.1 and 3 to 6.

2. Briefly stated, it is the prosecution case that accused no.1 is a registered partnership firm and at the relevant time, accused nos.2 to 6 were its partners. Accused no.1 firm and its partners are income tax assessees. The accounting year of accused no.1 firm is Samvat year i.e. the year ending on each Diwali. Thus, the accounting year of accused no.1 relevant to the year 1978-79 ended on 11.11.1977. As per the provisions of Section 139 (1) of the Income Tax Act, 1961 the firm was required to file its return of income tax on or before 30.6.1978. However, the accused firm filed its return on 29.12.1979 after a delay of 17 months. The tax payable for the said assessment year worked out at Rs.66,722/-. The accused firm paid the advance tax of Rs.33,976/-. After deducting the advance tax, tax payable by the accused was Rs.32,746/-. Since the accused did not file their return of income tax within the stipulated period, the income tax authorities initiated penalty proceedings by issuing show cause notice. On receiving the said show cause notice, the accused sought extension of time upto

September, 1978 for filing late returns. However, despite the extension of time being granted, the return was not filed within the said period and it was filed 14 months after 30.9.1978. The Income Tax Officer after considering the explanation offered by the accused, imposed the penalty of Rs.41,760/-. Being aggrieved by the said order, the accused preferred appeal before the Income Tax Officer, Kolhapur. The said appeal came to be dismissed on 30.11.1984. Thus, according to the complainant, the accused delayed the filing of the return only with a view to delay the payment of tax. Hence, the complaint came to be filed against the accused persons after seeking necessary permission from the Income Tax Commissioner as contemplated under Section 279(1) of the Income Tax Act.

3. Charge came to be framed against the appellants under Section 276CC of the Income Tax Act, 1961 i.e. accused persons wilfully failed to submit their assessment return for the year 1978-79 within the prescribed period. All the accused pleaded not guilty to the said charge and claimed to be tried.

The defence of all the accused is that original accused no.2 Vitthal Rajaram Shriram was the Managing Partner of firm i.e. accused no.1 and he was looking after all the affairs of the firm including the accounts of the firm. Vitthal Rajaram Shriram was suffering from heart ailment and therefore, he could not prepare the accounts of the firm within the prescribed time. Since the accounts could not be prepared in time, there was delay in submitting the assessment returns. It is the specific stand of all the accused persons that the said delay was not wilful or deliberate.

4. After going through the evidence adduced by the prosecution, the learned Magistrate convicted and sentenced the appellants as stated in para no.2 above. Hence, this appeal. I have heard Shri.R.M.Agarwal, the learned counsel appearing for the appellants, Mr.H.V.Mehta, the learned counsel appearing for the respondent no.1 and learned A.P.P. for State. I have also perused the evidence and the judgment and order of the learned Magistrate. After carefully considering the matter, I am of the opinion that this appeal

deserves to be allowed.

5. The prosecution has examined only one witness i.e. P.W.1 Govind Narsinh Raichur who is an Income Tax Officer. P.W.1 Govind Raichur has stated that the accused no.1 is a registered partnership firm and at the relevant time, accused nos.2 to 6 were its partners. Accused no.1 firm and its partners are income tax assessees. The accounting year of accused no.1 firm is Samvat year i.e. the year ending on each Diwali. Thus, the accounting year of accused no.1 relevant to the year 1978-79 ended on 11.11.1977. As per the provisions of Section 139 (1) of the Income Tax Act, 1961 the firm was required to file its return of income tax on or before 30.6.1978. However, the accused firm filed its return on 29.12.1979 i.e. after a delay of 17 months. The tax payable for the said assessment year worked out at Rs.66,722/-. The accused firm paid the advance tax of Rs.33,976/-. After deducting the advance tax, tax payable by the accused was Rs.32,746/-. Since the accused did not file their return of income tax within the stipulated period, the income tax authorities

initiated penalty proceedings by issuing show cause notice. On receiving the said show cause notice, the accused sought extension of time upto September, 1978 for filing late returns. However, despite the extension of time being granted, the return was not filed within the said period and it was filed 14 months after 30.9.1978. The Income Tax Officer after considering the explanation offered by the accused, imposed the penalty of Rs.41,760/-. Being aggrieved by the said order, the accused preferred appeal before the Income Tax Officer, Kolhapur. The said appeal came to be dismissed on 30.11.1984. Thus, according to the complainant, the accused delayed the filing of the return only with a view to delay the payment of tax. Hence, the complaint came to be filed against the accused persons after seeking necessary permission from the Income Tax Commissioner as contemplated under Section 279(1) of the Income Tax Act.

6. It may be stated here that the accused persons in their statement under Section 313 of Cr.P.C. have admitted that they were partners of the firm

i.e. accused no.1. They have also admitted that the accounting year of the firm is from Diwali to Diwali. They have further admitted that return of the assessment year 1978-79 was required to be filed by 30.6.1978, however, the return came to be filed on 29.12.1979 i.e. after a delay of 17 months. They have also admitted that penalty proceedings were initiated against them. However, the specific stand of all the accused is that original accused no.2 Vitthal Rajaram Shriram was the Managing Partner of the accused no.1 firm and he was looking after all its affairs including the accounts. As Vitthal Rajaram Shriram was suffering from heart ailment, he could not prepare the accounts of the firm within the prescribed time, hence, there was delay in filing the return. The delay was not wilful or deliberate. Keeping the specific stand taken by all the accused in mind, it is pertinent to note that P.W.1 Govind Raichur in his cross-examination has admitted that the return for the year 1978-79 was indeed filed by deceased accused no.2 Vitthal Rajaram Shriram. It is also an admitted fact that the Managing Partner i.e. original accused no.2 Vitthal Rajaram Shriram died

shortly thereafter on account of heart problem. It is also an admitted fact that accused have paid their tax dues with penalty and interest much before the commencement of the trial. Looking to the evidence on record, it does appear that lapse on the part of accused was not wilful or deliberate. Section 276-CC of the Income Tax Act, 1961 makes filing of late return punishable only for a person who 'wilfully' fails to furnish the said return in due time. Looking to the fact that original accused no.2 Vitthal Rajaram Shriram was the Managing Partner of the firm and the other evidence on record, it is seen that there is no evidence at all to show that the lapse on the part of the accused persons was 'wilful'.

7. It would be pertinent to refer to Section 278B of the Income Tax Act which reads as under:

. "278B(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable

to be proceeded against and punished accordingly.

. Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

. (2).....
. (3)....."

. The explanation to the said Section makes it clear that company means and includes a 'firm'. In the present case, the accused no.1 is a firm. Hence, the provisions of Section 278B would apply to the appellants i.e. firm and partners of the firm. In the present case, there is nothing to show that accused nos.3 to 7 were incharge of and were responsible to the firm for the conduct of business of the firm. No such evidence has been led by the prosecution. In this view of the matter also the conviction of the appellants is required to be set aside.

8. In view of the above, the conviction imposed by the learned J.M.F.C. Court No.2 Solapur dated 15.1.1991 in C.C.No.48 of 1986, on the original

accused nos.1 and 3 to 6 is set aside. The appellants-accused nos.1 and 3 to 6 are acquitted thereunder. Their bail bonds shall stand cancelled. Fine amount if paid by the appellants, be refunded.

. Appeal allowed.

[SMT.V.K.TAHILRAMANI,J.]